

AGOA: Getting it Right

The African Growth and Opportunity Act (AGOA) is U.S. legislation that offers tangible incentives for African countries to continue their efforts to open their economies and build free markets. It provides duty free access to the more than \$3 trillion dollar U.S. market for thousands of products from eligible sub-Saharan African countries. The purpose of the law is to assist sub-Saharan African economies through trade and development. But countries that wish to take advantage of AGOA must establish or “make continual progress toward establishing” certain minimum conditions, including: market-based economies; the rule of law; political pluralism; protection of intellectual property; efforts to combat corruption; policies to reduce poverty; and the protection of human rights, including worker rights. The Swazi government accepted these conditions when it first became AGOA eligible in 2001.

Since 2010, the United States Government has been expressing our concerns to the Government of Swaziland regarding their continued eligibility to participate in AGOA. These concerns relate to the government’s lack of continual progress in protecting internationally recognized human and worker rights. To avoid any ambiguity as to what we consider progress on these issues, the U.S. has provided the Swazi Government, since 2010, with specific benchmarks which would satisfy the criteria to make progress toward meeting the minimum conditions for AGOA eligibility. These benchmarks have been condensed and focused into five discrete items:

1. Passage of the amendment to the Industrial Relations Act allowing for the registration of trade union and employer federations;
2. Passage of the amendment to the Suppression of Terrorism Act allowing for the full recognition of freedom of association, assembly, and speech;

3. Passage of the amendment to the Public Order Act eliminating the requirement of police permission to hold public meetings and removing the wide discretion of security forces to intervene in public gatherings;
4. Passage of the amendments to Sections 40 and 97 of the Industrial Relations Act relating to civil and criminal liability of trade union leaders; and
5. Dissemination and implementation of the Code of Good Practice on Protest and Industrial Action.

Since President Obama's proclamation in June 2014 declaring Swaziland ineligible for benefits under AGOA, the Swazi Government has made some progress on the benchmarks 1 and 4, passing amendments to the Industrial Relations Act to allow for the registration of federations as well as to address civil and criminal liability of trade union leaders during labor protests. We applaud the progress they have made in these areas.

The Swazi Government also in 2015 approved and disseminated the Code of Good Practice on Protest and Industrial Action for Swazi police and security forces, though we are still waiting to see the Code put into practice. In March, in an effort to pass the additional legislative amendments before the ILO's International Labor Conference in Geneva in June, the Prime Minister presented to Parliament with a certificate of urgency amendments to the Suppression of Terrorism Act (STA) and the Public Order Act (POA). While we commend the Swazi Government for making an effort to address the remaining two benchmarks, the U.S. Government, along with several other countries and members of Swazi civil society, is very concerned that the proposed legislation does not resolve the fundamental problems with either the Suppression of Terrorism Act or the Public Order Act.

The proposed amendments to the STA leave the definition of a "terrorist act" overly broad, vague, and imprecise, allowing the Swazi Government almost boundless discretion in deciding what constitutes terrorism. And the proposed changes to the POA still unduly restrict the freedoms of association,

assembly, and speech. Legal analyses done by non-profit civil society organizations, including the American Bar Association Center for Human Rights and the International Center for Not-for-Profit Law, also conclude that the proposed amendments do not uphold the human rights guaranteed by Swaziland's own constitution, the International Covenant on Civil and Political Rights (ICCPR), or the African Charter on Human and Peoples' Rights. Many members of Swaziland's civil society have voiced similar concerns directly to Parliament as well.

The proposed amendments to these two Acts come at an important time for Swaziland. In addition to the upcoming ILO conference, Swaziland recently underwent its Universal Periodic Review (UPR) at the United Nations Human Rights Council (UNHCR) in Geneva. The UPR is a unique mechanism of the Human Rights Council aimed at improving the human rights situation on the ground of each of the 193 UN Member States. Each Member State is reviewed every four years. During the review, any Member State can make recommendations for any other Member State. Nearly seventy countries made recommendations for Swaziland. A number of Member States, including the US, UK, Norway, and Canada, raised questions around the STA and the POA, including how Swaziland intends to have these laws comply with international standards of best practice and Swaziland's own constitution. Similar questions and concerns were raised during Swaziland's review in 2011.

The AGOA benchmarks intersect at some points with a separate set of benchmarks laid out by the ILO. However, the AGOA benchmarks are not – and never have been – just about labor rights. The benchmarks are intended as a way to demonstrate concrete progress in critical areas of human rights. Just as in the United States, the positive change in the lives of Swazi citizens sought by the Swazi government and people alike is only possible when all can take an

active role in calling and working for the changes they would like to see in their country. There are many committed Swazis who are working hard to ensure that fundamental human rights are enjoyed equally by every citizen of the country. The fact that at least eight Swazi civil society organizations have submitted comments to Parliament on the STA Bill, and that many were also involved in civil society's submissions to the UNHRC as part of the UPR process, is evidence of their continued efforts to defend and promote universal human rights. Civic education and engagement are an important part of that work and should be embraced as a fundamental part of building a stronger nation, but that cannot happen if citizens are not permitted to associate and speak freely or if individuals who criticize the status quo can be labeled terrorists.

Civil society organizations, when given room to operate, help countries achieve and sustain more inclusive governance and economic growth, stronger democratic institutions, and more vigilant protection of human rights. Governments that protect fundamental human rights create more informed citizens who seek greater accountability. It is through the efforts of government, labor leaders, political activists, academia, civil society advocates, media, and ordinary citizens that Swaziland will move toward a healthier and more economically secure future for its people. So while meeting the benchmarks could lead to the very immediate benefit of regaining eligibility for duty free trade benefits under AGOA, amending the STA and POA to align with international standards and best practices will enable civil society to fulfill its role in improving the local business investment climate and promoting social and economic development.

It is more important to take the time now to get this legislation right rather than push through bills which do not address long-standing issues. An attempt

at a quick fix will only set Swaziland further back. It may take more time and effort, but careful attention to the specifics of these bills is crucial, both for regaining AGOA and, more importantly, for helping the government and people of Swaziland achieve their social and economic development goals.

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